



California Sportfishing Protection Alliance

"An Advocate for Fisheries, Habitat and Water Quality"

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26 May 2013

Ms. Pamela C. Creedon, Executive Officer, Rancho Cordova
Mr. Ken Landau, Assistant Executive Officer, Rancho Cordova
Mr. Lonnie M. Wass, Supervising Eng., Fresno
Ms. Jill Walsh, SEA, Fresno
Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670-6144

VIA: Electronic Submission
Hardcopy if Requested

RE: Administrative Civil Liability Complaint R5-2013-0527, Mandatory Minimum Penalties,
Malaga County Water District WWTF, Fresno County

Dear Messrs. Landau, Wass and Mesdames Creedon and Walsh,

The California Sportfishing Protection Alliance (CSPA) has reviewed the proposed Administrative Civil Liability Complaint (No. R5-2008-0583) for Malaga County Water District and submits the following comments.

On 23 January 2009, CSPA sent a letter providing comments on the proposed Administrative Civil Liability Complaint (No. R5-2008-0583) for Malaga County Water District. The proposed ACLC has not been finalized and has been replaced by ACLC R5-2013-0527. Our 23 January 2009 letter cited in part that:

The Malaga County Water District owns and operates a wastewater collection, treatment, and disposal system and provides sewerage service for the unincorporated community of Malaga and industrial users. Non-domestic sewage comprises approximately 83 percent of the influent. Tertiary-treated wastewater is discharged to the Fresno Irrigation District Central Canal (Central Canal).

"Exempted" Violations

The Regional Board exempted 108 violations not discussed in the mandatory minimum penalty for this time period; however this fact was not cited in the public documents for Administrative Civil Liability Complaint R5-2008-0583. The violations are available and were accessed from the State and Regional Board's database, CIWQS. The database shows that the violations were for exceedances of the electrical conductivity (EC) limitation and were exempted because the source water was not sampled on the same day as the wastewater discharge (effluent) or that the exceedance was less than 2% over the limitation. Recalling that the limitation states that:

“Effluent [electrical conductivity or EC] shall not exceed that of source water plus 500 µmhos/cm, or 1000 µmhos/cm, whichever is less.”

The NPDES permit Order 99-100 does not require sampling of the effluent and source water concurrently for the discharge limitation to be valid. Our review of the exempted violations also shows that the source water quality variability was minimal. The exempted violations are all reported as occurring in 2004 and 2007 with the exception of one which is reported as occurring in 2008. There is no explanation of the compliance period for 2005 and 2006. The exempted violations reporting also changed; the 2004 data indicates individual grab sample exceedances whereas the 2007 data indicates a monthly average (as is indicated by an “M” next to the data point). There is nothing in the permit which would indicate that the sampling or compliance period for EC is a monthly average. Monthly averaging of the data would likely result in fewer recorded violations than discrete points. The “exemption” from mandatory penalties is not justified; the discharge exceeded the discharge limitation.

Conclusion

The 108 exempted violations were not included, mentioned or discussed in Administrative Civil Liability Complaint R5-2008-0583. Therefore, it is reasonable to request the Central Valley Regional Water Quality Control Board to take appropriate enforcement, by issuance of MMPs, for the “exempted” violations. The State Water Resources Control Board, Office of Enforcement, should be requested to review their decision to designate Malaga CWD as a small community since 83% of the wastewater is from non-domestic sources.

The currently proposed ACLC, R5-2013-0527 improperly fails to include the “exempted” violations and therefore also fails to adequately assess adequate mandatory minimum penalties (MMPs) as is required under the California Water Code. The comments transmitted in our 23 January 2009 letter are still applicable to the currently proposed ACLC. A copy of our 23 January 2009 letter is attached and should be included along with this correspondence as CSPA’s comments on the proposed ACLC for Malaga County Water District.

Thank you for considering these comments. If you have questions or require clarification, please don’t hesitate to contact us.

Sincerely,



Bill Jennings, Executive Director
California Sportfishing Protection Alliance

Cc: Cris Carrigan Esq., Office of Enforcement, SWRCB

Attachment: CSPA Comment Letter, 23 January 2009